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PAYWARD VENTURES, INC., d/b/a  
KRAKEN OR KRAKEN.COM

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

PAYWARD VENTURES INC., d/b/a  
KRAKEN OR KRAKEN.COM, OR ITS  
PREDECESSORS, SUBSIDIARIES,  
DIVISIONS, OR AFFILIATES,

Respondent.

Case No. 3:23-MC-80029-JCS

**RESPONDENT PAYWARD  
VENTURES, INC.'S ADMINISTRATIVE  
MOTION TO FILE UNDER SEAL  
PORTIONS OF ITS OPPOSITION TO  
PETITION TO ENFORCE INTERNAL  
REVENUE SERVICE SUMMONS AND  
SUPPORTING DECLARATION**

Date: May 19, 2023  
Time: 9:30 a.m.  
Courtroom: F (15th Floor)  
Judge: Hon. Joseph C. Spero

**MEMORANDUM OF POINTS AND AUTHORITIES**

Pursuant to Civil Local Rules 7-11 and 79-5, Payward Ventures, Inc. (“Kraken”) hereby moves to file under seal certain portions of its Opposition to Petition to Enforce Internal Revenue Summons (“Opposition”) (ECF No. 16) and the Declaration of Todd Siemers in Support of that Opposition (ECF No. 16-4) that describe confidential commercial information regarding Kraken’s business operations. The parties are meeting and conferring as to the proposed redactions. It is currently anticipated that Kraken will supersede with a less redacted Opposition, well prior to the parties’ May 19, 2023 hearing on the Petition to Enforce.

**LEGAL STANDARD**

Civil Local Rule 79-5(c)(1) requires a party seeking to file documents under seal to submit “a specific statement of the applicable legal standard and the reasons for keeping a document under seal, including an explanation of: (i) the legitimate private or public interests that warrant sealing; (ii) the injury that will result if sealing is denied; and (iii) why a less restrictive alternative to sealing is not sufficient.”

A party seeking to keep judicial records under seal must demonstrate “good cause” or “compelling reasons” for doing so. *See Kamakana v. City & County of Honolulu*, 447 F.3d 1172, 1178-1179 (9th Cir. 2006); *see also Pintos v. Pacific Creditors Ass’n*, 605 F.3d 665, 677-79 (9th Cir. 2010). “Under the ‘compelling reasons’ standard, a district court [] weigh[s] ‘relevant factors,’ [and] base[s] its decision on a ‘compelling reason.’” *Pintos*, 605 F.3d at 679 (quoting *Hagestad v. Tragesser*, 49 F.3d 1430, 1434 (9th Cir. 1995)). “‘Relevant factors’ include the ‘public interest in understanding the judicial process and whether disclosure of the material could result in improper use of the material for scandalous or libelous purposes or infringement upon trade secrets.’” *Id.* at 679 n.6 (quoting *Hagestad*, 49 F.3d at 1434).

“Historically, courts have recognized a ‘general right to inspect and copy public records and documents, including judicial records and documents.’” *Kamakana*, 447 F.3d at 1178 (quoting *Nixon v. Warner Communs., Inc.*, 435 U.S. 589, 597 (1978)). “Nonetheless, access to judicial records is not absolute [and] [a] narrow range of documents is not subject to the right of public access at all because the records have ‘traditionally been kept secret for important policy reasons.’”

1 *Id.* (citing *Times Mirror Co. v. U.S.*, 873 F.2d 1210, 1219 (9th Cir. 1989)). “[T]he common-law  
 2 right of inspection has bowed before the power of a court to insure that its records are not used [...] as sources of business information that might harm a litigant’s competitive standing[.]” *Nixon*, 435  
 3 U.S. at 598 (internal citations omitted).

### 4 ARGUMENT

5  
 6 Kraken’s Administrative Motion to File Under Seal (“Motion”) is supported under the  
 7 “good cause” and “compelling reasons” standards. As set forth below, in light of the significant  
 8 confidentiality concerns and because the information sought to be redacted is narrowly tailored,  
 9 Kraken’s requests will not interfere with the public’s ability to understand the judicial process or  
 10 significant public events. *See Kamakana*, 447 F.3d at 1179.

11 Kraken requests that the Court seal certain highlighted portions of the Declaration of Todd  
 12 Siemers in Support of Kraken’s Opposition (“Siemers Declaration”) and highlighted portions of  
 13 the Opposition that reference the information contained within the Seimers Declaration (together,  
 14 the “Redacted Materials”).<sup>1</sup> The identified portions of the Redacted Materials, as reflected in the  
 15 Declaration, describe Kraken’s confidential and proprietary business information regarding the  
 16 innerworkings of Kraken’s IT processes and commercial data regarding its users and their  
 17 transactions. More specifically, the Redacted Materials includes information relating to:

- 18 • Kraken’s data and information storage systems, practices, and protocols, including  
 19 information relating to the types of user data stored internally by Kraken, where and  
 20 how that information is stored, and types and storage of transactional data generated;
- 21 • Internal metrics as to Kraken clients based on certain threshold values of transaction  
 22 history and transaction type; and
- 23 • Kraken’s IT department functionality and analytical capabilities.

24 *See* Declaration of Grant P. Fondo in Support of Administrative Motion to File Under Seal Portions  
 25 of Kraken’s Opposition to Petition to Enforce Internal Revenue Service Summons and Supporting  
 26 Declaration (“Fondo Decl.”) ¶¶ 2-3. Kraken’s internal metrics as to clients and transactions  
 27

28 <sup>1</sup> The unredacted versions of these documents are being filed as exhibits concurrently herewith  
 with highlighting to demonstrated the portions sought to be sealed.

1 pertaining to those clients are confidential, and certain types of information regarding its internal  
2 data storage practices, protocols, and systems, and internal IT functionality and analytical  
3 capabilities like those identified in the Redacted Materials are not shared publicly. *Id.* ¶ 4.

4 If such Redacted Materials were publicly disclosed, it would harm Kraken’s business  
5 interests and competitive standing. *Id.* ¶ 5. Public disclosure of confidential business information  
6 detailing the innerworkings of Kraken’s data storage system, particularly as they concern the  
7 storage of user information and transactional data, and IT functionality and capabilities could  
8 substantially harm Kraken and its users, given the nature of that information, by providing potential  
9 cyberattackers insight into its data storage practices and protocols. *Cf., e.g., In re Anthem, Inc.*  
10 *Data Breach Litig.*, No. 15-MD-02617-LHK, 2017 WL 9614789, at \*2 (N.D. Cal. Aug. 25, 2017)  
11 (“The Court agrees that if specific information regarding Anthem’s cybersecurity practices were  
12 disclosed, this could allow cyberattackers greater opportunity to defeat these defenses and  
13 substantially harm both Anthem and putative class members.”); *U.S. ex rel. Markus v. Aerojet*  
14 *Rocketdyne Holdings, Inc.*, No. 2:15-CV-02245 WBS AC, 2021 WL 4951788, at \*2 (E.D. Cal. Oct.  
15 25, 2021) (“[T]he request to seal will be granted as to defendants’ motion, defendants’ statement,  
16 and exhibits reflecting cybersecurity and non-public business information.”). This could lead to an  
17 increased threat of a cyberattack that puts the security of its accountholders’ information at risk. A  
18 hack into such systems or phishing attacks on these accounts not only risks potential theft of  
19 accountholder information, but also jeopardizes accountholder digital assets. Indeed, these digital  
20 assets are likely to be viewed as even more valuable to a potential cybercriminal. Such a  
21 cyberattack could result in a theft that could be substantial, leading to potentially significant  
22 financial loss to—not to mention an invasion of privacy of—Kraken accountholders. *See, e.g., In*  
23 *re Anthem, Inc. Data Breach Litig.*, 2017 WL 9614789, at \*2; *see also, e.g., U.S. ex rel. Markus*,  
24 2021 WL 4951788, at \*2 (“Courts have also held that cybersecurity is a compelling reason to seal  
25 documents.”).

26 Not only would disclosure of this data storage and IT system information create an increased  
27 security risk to Kraken and its accountholders, but it could also harm Kraken’s goodwill and  
28 competitive standing with its clients in light of that risk—especially if it were to become a reality.

1 *See generally In re Elec. Arts, Inc.*, 298 F. App'x 568, 569 (9th Cir. 2008) (“[T]he common-law  
2 right of inspection has bowed before the power of a court to insure that its records are not used ...  
3 as sources of business information that might harm a litigant’s competitive standing.”); *Nixon*, 435  
4 U.S. at 598 (“[S]ources of business information that might harm a litigant’s competitive standing  
5 [if disclosed]” can give rise to a compelling reason to seal).

6 Moreover, internal metrics as to Kraken clients based on certain threshold values of  
7 transaction history and transaction type are confidential and the precise type of commercially  
8 sensitive business information this Court should protect. Public disclosure of this category of  
9 proprietary information could be commercially valuable to Kraken’s competitors and harm its  
10 standing in the industry, as it provides insight into Kraken’s userbase at the levels at which they are  
11 transacting within the exchange platform. *See generally, e.g., In re Elec. Arts, Inc.*, 298 F. App'x  
12 at 569 (sealing exhibit containing sensitive trade secret information and defining trade secret to  
13 mean “any formula, pattern, device or compilation of information which is used in one's business,  
14 and which gives him an opportunity to obtain an advantage over competitors who do not know or  
15 use it”). Consequently, this category of information too is worthy of sealing.

16 In sum, Kraken’s confidentiality interests overcome the right of public access to the record,  
17 as a substantial probability exists that the Kraken’s overriding confidentiality interests will be  
18 prejudiced if portions of the Opposition and Siemers Declaration are not sealed. In order to balance  
19 the right of public access with Kraken’s competing confidentiality concerns, Kraken has filed a  
20 redacted version of each of the above-referenced documents. The proposed sealing is narrowly  
21 tailored to seal only confidential information regarding the information relating to Kraken’s data  
22 storage efforts, internal client metrics, and IT system capabilities, and no less restrictive means  
23 exist to achieve this overriding interest. Thus, Kraken has good cause and a compelling reason to  
24 keep such information under seal.

### 25 CONCLUSION

26 For the foregoing reasons, Kraken respectfully requests the Court grant Kraken’s  
27 Administrative Motion and issue an order to seal the Redacted Materials and place in the public  
28 record the redacted version of the Redacted Materials.

Respectfully submitted,

Dated: April 24, 2023

By: /s/ Grant P. Fondo

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